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Legislative Notice

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S. 414 — Ocean Shipping Reform Act

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Reported from the Committee on Commerce, Science and Transportation on July 31, 1997, with amendments. S. Rept. 105-61.

NOTEWORTHY

- S. 414 reforms America's maritime industry and reduces the federal government's role in international ocean transportation.
- S. 414 amends the Shipping Act of 1984 and other related U.S. shipping laws to encourage competition in international shipping, growth in United States exports, and the increased use of United States ports for international trade.
- Senator Hutchison, chairman of the Merchant Marine Subcommittee, will offer a substitute amendment to accommodate an agreement reached among maritime interests that was reached after the bill was reported.

BACKGROUND

Brief History

U.S. regulation of the international ocean shipping industry began with the Shipping Act of 1916. In 1961, Congress amended the 1916 Act to address concerns about anticompetitive conduct by ocean carrier conferences and to establish the Federal Maritime Commission (FMC) to regulate ocean shipping practices. Throughout the 97th and 98th Congresses, ocean shipping regulation was considered. This Act overhauled the ocean carrier agreement review process, allowed greater flexibility in the type of discount-rate and contracts that could be offered by ocean carriers, recognized the increasing role of non-vessel-operating common carriers

(NVOCCs) and shippers' associations in facilitating intermodal ocean transportation, and expanded the right of independent action to conference tariffs. Also, the 1984 Act established an Advisory Commission on Conferences in Ocean Shipping (the Advisory Commission).

Shippers' Concerns Identified

Although the 1992 Advisory Commission report produced no consensus on recommended changes to the 1984 Act, it did identify several concerns. (1) Ocean carrier conferences: Many shippers expressed concern that conferences were able to wield excessive power to prevent competition. (2) Publication of tariff and service contract rates and terms: Many large volume shippers expressed concern that the transparency of the U.S. system disadvantages U.S. shippers with respect to their foreign competitors in third markets. (3) Shippers associations, NVOCCs, and freight forwarders: Many shippers' associations and NVOCCs expressed concerns that conferences were not negotiating with them in good faith.

Additional Need of Shipping Industry

In addition to the above concerns expressed in the report, there has been recent support by U.S. ocean carriers for relief from common carriage principles with respect to service contracts, including confidentiality of service contract terms. As the need for intermodal shipping services becomes more global, ocean carriers rely on complex partnerships with other ocean carriers to coordinate assets and services. These ocean carriers partnerships involve smaller carrier groups and more comprehensive coordination of intermodal and ocean shipping assets than typical conference activities, which are focused more on rate stability. Many U.S. ocean carriers participate in collective shipping arrangements and believe that these arrangements would produce maximum efficiency if carriers were allowed to engage in joint contracts for service. Shipper needs for global shipping alternatives will continue, and carrier flexibility to engage in tailored carrier-shipper contracts will increase.

Committee Action

The Committee has conducted two hearings and more than 100 meetings with affected industry and federal agency representatives. Attempts to balance the concerns of all of these affected parties — shippers, port authorities, ocean carriers, and labor unions — were difficult given the competing interests. Additionally, the Committee bill attempted to balance the need to deregulate the industry with the need to provide oversight of industry practices, given the immunity from the antitrust laws. The reported bill attempted to compromise the positions and interests of those who support complete deregulation of ocean shipping and those who support the status quo; however, there were still unresolved problems.

Hutchison Amendment

Over the past few months, representatives from the maritime industry have worked to find an acceptable solution and resolve their differences with the reported bill. Senator Hutchison will offer an amendment to reflect this agreement. Industry support includes U.S. and foreign flag carriers, the National Industrial Transportation League, the American Association of Port Authorities, and organized labor.

BILL PROVISIONS

[This summary has been prepared by the Republican staff of the Commerce Committee.]

S. 414, for ocean liner shipping through U.S. ports, as reported would:

- Provide shippers and common carriers greater choice and flexibility in entering into contractual relationships with shippers for ocean transportation and intermodal services. The most significant improvements are: (1) the right of members of ocean carrier agreements to negotiate and enter into service contracts with one or more shippers independent of the agreement; and (2) the right of groups of ocean common carriers to jointly negotiate inland transportation rates and services, subject to the antitrust laws and consistent with the purposes of the 1984 Act.
- Reduce the expense of the tariff filing system and privatize the function of publishing tariff information while maintaining most current tariff enforcement and common carriage principles with regard to tariff shipments. The bill would protect shippers from FMC or court action to require the shipper to pay tariff or service contract undercharges. The 1984 Act's penalties for undercharge violations remain in effect.
- Protect U.S. exporters from disclosure to their foreign competitors of certain proprietary business information through their contractual relationships with common carriers by allowing confidentiality terms of all service contracts.
- Specifically exempt new assembled motor vehicles from tariff and service contract requirements and provide the Federal Maritime Commission (FMC) with greater flexibility to grant general exemptions from provisions of the 1984 Act.
- Reform the licensing and bonding requirements for ocean freight forwarders and non-vessel-operating common carriers (NVOCCs) and allow businesses which perform the functions of one or both entities to be known as "ocean transportation intermediaries."
- Strengthen the provisions of the 1984 Act, the Foreign Shipping Practices Act of 1988, and section 19 of the Merchant Marine Act of 1920, that prohibit unfair foreign shipping practices to provide greater protection from certain discriminatory actions.
- Provide for an orderly transition to this more deregulated ocean shipping environment.
- Preserve the Federal Maritime Commission (FMC) as an independent, effective, ocean shipping regulatory agency.

ADMINISTRATION POSITION

On October 8, 1997, the Administration issued a letter supporting the intent of S. 414 and many of the provisions of the Committee-reported bill, but requesting that other provisions of S. 414 be changed. Some of the changes requested by the Administration are included in Senator Hutchison's substitute amendment. According to the Committee, the Administration will not object to Senate passage of the Hutchison amendment, but intends to seek amendments in the House to make changes to the Senate bill.

COST

CBO estimated that enacting the Committee-reported bill would increase discretionary spending in 1998 by \$1 million over the current year's funding level, assuming appropriation of the authorized amount. Changes made by the Hutchison amendment would reduce this cost and delay it until 1999. In addition, the bill would affect both revenues and direct spending each year. It would increase direct spending by between \$0.2 million and \$0.4 million annually. It would increase federal revenues by about \$1 million in 1998 and decrease revenues by roughly the same amount in each of the following years. Because the bill would affect direct spending and receipts (revenues) in 1998, pay-as-you-go procedures apply. CBO estimates that S. 414 would have no significant effect on direct spending in 1998 and would increase receipts in 1998 by about \$1 million.

POSSIBLE AMENDMENTS

[This information was prepared by the Republican staff of the Commerce Committee.]

Hutchison, et al. Amends the Commerce Committee reported bill to make the following changes:

- *The reported bill* included a single standard for all service contracts that would have required publication of service contract commodities, volumes or portions, duration, and United States port ranges while allowing other essential terms to be confidential. *The floor amendment* would also require the publication of origin and destination (i.e., foreign and United States) port ranges, not just United States port ranges.
- *The reported bill* would have authorized non-vessel-operating common carriers (NVOCCs) to enter into service contracts as common carriers (the 1984 Act authorized NVOCCs to enter into service contracts as shippers). *The floor amendment* would retain the NVOCC's

1984 Act service contract authority, but not provide the new authority included in the reported bill.

- *The reported bill* would have established a process through which longshore labor could obtain unpublished service contract information if the FMC determined that the information was required to resolve a collective bargaining dispute between that labor organization and the common carrier party to the service contract. *The floor amendment* would replace this provision with a requirement that an ocean common carrier party to a collective bargaining agreement provide service contract information concerning specific dock or port area cargo movements upon the labor organization's request. Determinations concerning a carrier's obligations under the collective bargaining agreement to provide certain work to labor organizations would continue to be made under the dispute resolution procedures of that agreement and applicable labor law.
- *The reported bill* would have applied certain discrimination prohibitions to individual common carrier service contracts with respect to location, port, class or type of shipper or ocean transportation intermediary, or description of traffic. *The floor amendment* would apply these prohibitions to individual common carrier service contracts with respect to ports, and to service contracts involving more than one ocean common carrier with respect to locality, ports, or person due that person's status as a shippers association or ocean transportation intermediary.
- *The reported bill* retained the 1984 Act prohibition against groups of common carriers jointly negotiating inland transportation rates and services. *The floor amendment* would allow this activity for groups of ocean carriers, subject to the antitrust laws and consistent with the purposes of the 1984 Act.
- *The reported bill* would allow FMC or court action to require the shipper to pay tariff or service contract undercharges. *The floor amendment* would protect shippers from such FMC or court action while retaining the 1984 Act penalties for undercharge violations.
- *The reported bill* would have combined the functions of the FMC and the Surface Transportation Board into a single agency. *The floor amendment* retains these separate agencies and functions in their current form.

Gorton. To provide authority for NVOCC's who buy vessel space from vessel-operating common carriers to resell that space to shipper customers through confidential contracts. Currently, they can only do that through publicly available tariffs.

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